

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JAMES GRAHAM

Claimant

VS.

DOKTER TRUCKING GROUP

SOLDIER CREEK TRANSPORTATION

Respondents

AND

UNION INSURANCE COMPANY

CONTINENTAL WESTERN INS. CO.

Insurance Carriers

Docket No. 1,006,954

ORDER

One of the respondents, Dokter Trucking and its insurance carrier Union Insurance Company, request review of the February 11, 2005 Order entered by Administrative Law Judge (ALJ) Bryce D. Benedict.

ISSUES

Without the benefit of a hearing, the ALJ denied respondent Dokter Trucking's request to extend its terminal dates. In denying this request, the ALJ reasoned that "[r]espondent knew as of early September that its terminal date would be approximately January 9, 2005, yet it did nothing. Not until after the regular hearing on December 9 [2002] did the [r]espondent begin looking into scheduling its depositions."¹ Accordingly, he refused to grant respondent's request for an extension of its terminal dates.

¹ ALJ Order (Feb. 11, 2005).

The Dokter Trucking and its carrier request review of whether the ALJ erred in refusing to grant its request for an extension so that the depositions of Dr. Poole and Dick Santner could be taken.² Respondent contends that it made every effort to promptly schedule the depositions at the earliest mutually convenient date. When it became clear that the required depositions could not be done before the terminal date, respondent requested claimant agree to an extension. Claimant was not willing to agree and as a result, respondent wrote the ALJ on January 27, 2005 requesting an extension of time. Respondent contends it demonstrated good cause in support of its request for an extension. Nonetheless, this request was denied without a hearing³ and is therefore the subject of this appeal.

Claimant argues that respondent made no effort to schedule its experts' depositions until after the regular hearing and took another two weeks after the regular hearing to schedule Dr. Poole's deposition. Accordingly, claimant maintains there is no good cause to substantiate respondent's request for an extension of time and the ALJ properly rejected the request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The initial issue that the Board must address in this case is whether the Board has jurisdiction to review the ALJ's Order which denied respondent's request to extend its terminal date. The Board finds and concludes that it does not have jurisdiction to review this particular matter at this juncture of the proceedings.

The ALJ's decision to extend terminal dates is interlocutory in nature and made during the litigation of a workers compensation case that is before the ALJ. This is neither a final order that can be reviewed pursuant to K.S.A. 44-551, nor an order entered pursuant to the preliminary hearing statute, K.S.A. 44-534a, as preliminary hearing orders are limited to issues of furnishing medical treatment and payment of temporary total disability compensation.

The Order now before the Board pertains to an interlocutory matter, over which an ALJ, pursuant to K.S.A. 44-523(c) has the authority to decide during the litigation of a workers compensation case. Consequently, the Board lacks jurisdiction to review such an order until it is contained in a final order or award.

² Respondent's Brief at 1 (filed Mar. 18, 2005)(see footnote 1). It should also be noted that Mr. Santner's Deposition was taken only one day after the original terminal date.

³ Respondent's Brief at 2-3 (filed Mar. 18, 2005).

WHEREFORE, it is the finding, decision and order of the Board that respondent's appeal from Administrative Law Judge Bryce D. Benedict's Order dated February 11, 2005, is dismissed.

IT IS SO ORDERED.

Dated this _____ day of April, 2005.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Frederick J. Patton, II, Attorney for Claimant
Nathan Burghart, Attorney for Dokter Trucking Group and its Insurance Carrier
Patrick Barnes, Attorney for Soldier Creek Transportation and its Insurance Carrier
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director